IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

ALYSSA F. McALISTER,

Appellant,

v.

ETHAN T. STROHMEYER,

Respondent.

DOCKET NUMBER WD75160

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DATE: January 8, 2013

APPEAL FROM

The Circuit Court of Johnson County, Missouri The Honorable Jacqueline A. Cook, Judge

JUDGES

Division Two: Hardwick, P.J., and Smart and Mitchell, JJ.

CONCURRING.

ATTORNEYS

Leonard K. Breon Warrensburg, MO

Attorney for Appellant,

John H. Edmiston Warrensburg, MO

Attorney for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

ALYSSA F. McALISTER,)	
	Appellant,)	
v.)	OPINION FILED:
)	January 8, 2013
ETHAN T. STROHMEYER,)	
)	
	Respondent.)	

WD75160 Johnson County

Before Division Two Judges: Lisa White Hardwick, Presiding Judge, and James M.

Smart, Jr., and Karen King Mitchell, Judges

Alyssa McAlister appeals the denial, following a bench trial, of her request for a full order of protection against her child's father, Ethan Strohmeyer. McAlister argues that the undisputed evidence demonstrated that Strohmeyer pointed a gun at her and that such conduct constituted an attempt to place her in fear of physical harm under section 455.010. Consequently, McAlister argues, the trial court was required by section 455.040.1 to issue a full order of protection on McAlister's behalf against Strohmeyer.

AFFIRMED.

Division Two holds:

1. Section 455.040.1 mandates the issuance of a full order of protection upon proof of an act of abuse without any further proof of immediate or present danger. But, because the remedies provided under the Adult Abuse Act consist primarily of injunctive relief, proof of an act of abuse under section 455.040.1 carries with it a presumption of immediate and present danger that justifies both the remedy provided and the limit on the trial court's discretion. This presumption, however, does not preclude a respondent from demonstrating that his or her actions alleged to constitute abuse were otherwise justified under the law.

- 2. Where an individual's conduct is justified by Chapter 563 (defense of self, others, or property), section 563.074.1 precludes the entry of a full order of protection against the individual on the basis of the justified conduct.
- 3. Here, Strohmeyer's act of pointing a gun at McAlister was justified under Chapter 563 because he was acting in direct response to McAlister's unprovoked physical attack upon him in his own home. Thus, the trial court did not err in denying McAlister's request for a full order of protection.

Opinion by: Karen King Mitchell, Judge

January 8, 2013

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